



**CITY OF HAMILTON**

**HAMILTON EMERGENCY SERVICES**  
*Emergency Medical Services*

<b>TO:</b> Chair and Members Emergency & Community Services Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> May 4, 2011	
<b>SUBJECT/REPORT NO:</b> Procedure for Procurement of Supplies (HES11006) (City Wide)	
<b>SUBMITTED BY:</b> Brent Browett Director, Emergency Medical Services Hamilton Emergency Services	<b>PREPARED BY:</b> Brent Browett (905) 546-2424 x7741 Blaine Lucas (905) 546-2424 x7739
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That Medbuy Corporation be approved as a Group Purchasing Organization (GPO) partner for pharmaceuticals, medical supplies and equipment for the City of Hamilton for a period of four (4) years;
- (b) That the City of Hamilton participate in the Medbuy CapSource Program for long-term capital purchases of medical supplies and equipment;
- (c) That the General Manager of the department, or his/her designate, be authorized to bind the municipality to a procurement process, the result of which would be a contract for which Medbuy Corporation would be the agent of the City;
- (d) That the Mayor and City Clerk be authorized to sign the Medbuy Corporation Associate Program Agreement attached as Appendix A to Report HES11006.

**EXECUTIVE SUMMARY**

The City of Hamilton has been using multiple methods to secure pharmaceuticals, medical/surgical supplies and equipment for Emergency Medical Services (EMS). This approach has not necessarily resulted in the lowest possible costs for the municipality.

Over the past year, Hamilton EMS has been investigating options for the group purchasing of pharmaceuticals, medical/surgical supplies and equipment. Medbuy Corporation was evaluated based on positive references from Hamilton Health Sciences Corporation, St. Joseph's Health Care and McMaster University as current members in the Group Purchasing Organization (GPO). In addition, the Association of Municipal Emergency Medical Services of Ontario (AMEMSO) also identified Medbuy Corporation as a critical partner as a GPO that could result in significant savings for Upper Tier Municipalities. The AMEMSO project is in progress and confirmation of implementation is yet to be determined.

Based on the potential cost efficiencies and improved continuity of care for patients, staff as noted in the foregoing, recommends a relationship be established with Medbuy Corporation for a period of four (4) years without further delay.

Medbuy Corporation utilizes national purchasing power for its members, which include hospitals, long term care facilities, universities and other publicly funded and accountable organizations. Medbuy Corporation provides procurement services at a very low cost, and ensures its members have full transparency to its activities through comprehensive quarterly reports. Medbuy Corporation offers membership only to public and non-profit organizations.

Medbuy Corporation is compliant with all current federal and provincial public sector procurement guidelines, as well as competitive bidding law. Medbuy Corporation policies and procedures align with the Agreement on Internal Trade as well as the Ontario/Quebec Procurement Agreement. Medbuy Corporation, because it is owned by public sector institutions, is considered to be a broader public sector organization. As such, in Ontario, the Medbuy Corporation is required to be fully compliant with the Broader Public Sector Supply Chain Secretariat's Guidelines as well as the Procurement Directive which came into effect April 1, 2011, as confirmed in correspondence dated March 28, 2011 from Medbuy Corporation attached as Appendix B to Report HES11006.

Medbuy Corporation as any publicly funded entity is subject to audit by the Auditor General of the Province of Ontario as it relates to their business practices as an agent of their members as publicly funded, publicly accountable entities. Transparency is a tenet of Medbuy Corporation and they are open to audit by members or any of the Ministries that impact the work they undertake on behalf of members, as confirmed in

correspondence dated April 4, 2011 from Medbuy Corporation attached as Appendix C to Report HES11006.

Also important to note is that Hamilton Health Sciences, St. Joseph's Healthcare Hamilton and McMaster University are all members of Medbuy Corporation. Should the City of Hamilton select Medbuy Corporation as its single source partner for group purchasing services, patients will receive the unique benefit of product continuity across nearly all care providers within the municipality.

The membership in Medbuy would be a City of Hamilton corporate initiative. All departments would have the option of participation in the group purchasing organization and benefit from the cost savings. This information has been shared with the City's Procurement Section as well as Public Health.

Financial analyses conducted by Hamilton EMS show an average savings potential of 45% for pharmaceuticals and 30% for medical/surgical supplies for the municipality based on the 2010 needs of the EMS division. The savings will assist the EMS division in absorbing any new costs arising related to increased safety and patient care requirements and other potential budget pressures during the period of the contract.

***Alternatives for Consideration – See Page 8***

<b>FINANCIAL / STAFFING / LEGAL IMPLICATIONS</b> (for Recommendation(s) only)
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**Financial:** Pharmaceuticals, medical/surgical supplies and equipment are purchased within the allocated operating budget. The fee for the Medbuy Corporation membership would also be generated from the current operating budget.

**Staffing:** There are no staffing implications.

**Legal:** Medbuy Corporation Associate Program Agreement requires compliance with the vendor contracts, for which the City elects to participate, for a specific period of time. Medbuy provided an example, attached as Appendix D to Report HES11006, of the Standard Terms & Conditions of a vendor contracts for the purposes of the council report. Medbuy will from time to time amend its contract language to ensure it is contemporary and meets the needs of its members and the prevailing legislation.

**HISTORICAL BACKGROUND** (Chronology of events)

Medbuy Corporation, because of its diversity of membership, size and scope of contracts, represents a unique opportunity for all of the municipally managed health care services to take advantage of significant savings offered by a national GPO.

Medbuy Corporation has provided group purchasing services to Canadian health care organizations for 22 years. Members in the province of Ontario include: Hamilton Health Sciences, St. Joseph's Health System Hamilton (including its long term care facilities), McMaster University, Niagara Health System, Brant Community Health System, Joseph Brant Memorial Hospital, St. Mary's Hospital (Kitchener), Grand River Hospital (Kitchener), Cambridge Memorial Hospital, Guelph General Hospital, St. Michael's Hospital and many more.

**POLICY IMPLICATIONS**

City of Hamilton's Procurement Policy By-law, Section 4.11 – Policy for Negotiations (Single source), Policy 11 provides for the recommending of a single source vendor for the supply of a particular good and/or Service because it is more cost effective or beneficial for the City.

**RELEVANT CONSULTATION**

Don Fisher, Assistant City Solicitor, was consulted on the membership agreement and contractual articles to ensure the document was in the best interest of the City.

Angela Mastandrea, Procurement Manager, was consulted regarding the membership agreement, purchasing policies, and the status of current vendor contracts for medical/surgical supplies, pharmaceuticals and equipment.

Adriana Byrne, Senior Procurement Specialist, was consulted in regards to the membership agreement, procurement policies and the status of current vendor contracts.

Catherine Kenyeres, Supervisor Accounts Payable, was consulted to confirm the process required for the payment of Medbuy Membership fees.

John McLennan, Risk Management Coordinator, was consulted in order to have staff assigned to review the membership agreement.

Jody Boyd, Risk Management Services, was consulted to ensure the agreement contained the appropriate insurance and indemnification protection in the best interest of the City.

Michael Kirkopoulos, HES Senior Project Manager, was consulted on the cost-benefit analysis completed by the EMS division.

Lorraine Paddon, HES Business Administrator, was consulted on the cost-benefit analysis completed by the EMS division.

James Doyle, HES-Fire Assistant Deputy Chief, was consulted on the ordering procedures and process to be completed by HES-Stores.

Trish McDonnell, Financial Assistant I, was consulted on the cost-benefit analysis completed by the EMS division.

Gary Clarke, HES Storekeeper, was consulted on the current status of pharmaceuticals and distribution procedures.

Leslie McGill, Senior Vice President Member Services, Medbuy Corporation, was consulted on the per unit cost analysis, rebate program, membership rates, references and compliance with federal/provincial competitive procurement requirements.

Lesley Corneluis, Director Member Services, Medbuy, was consulted on the medical/surgical products and invoicing process.

Richard Jones, Senior Vice President of Pharmacy, Medbuy, was consulted on the medications utilized by EMS, pharmaceutical supply/delivery protocols, prescription process and legislative compliance issues.

Dr. Doug Munkley, Associate Medical Director, Centre for Paramedic Education & Research, was advised of the potential change in pharmaceutical suppliers and the requirement to submit prescriptions to another organization.

Dr. Michael Shuster, Hamilton EMS Municipal Medical Advisor, was provided the pharmaceutical cost analysis for review.

Valarie Valle, Manager Member Implementation & Support, Medbuy Corporation, was consulted on the price per unit analysis and product quality and comparability.

Susan Hollis, Vice President of Business & Therapeutic Services & CFO, St. Joseph's Health Care Hamilton provided a letter of reference dated March 31, 2011, attached as Appendix E to Report HES11006, as a current member of the Medbuy Corporation.

Cynthia L. Shanahan, Director of Purchasing Resources, McMaster University provided a letter of reference dated March 31, 2011, attached as Appendix F to Report HES11006, as a current member of the Medbuy Corporation.

Vicki Woodcox, Administrator, Long Term Care, Community Services, was consulted to ensure the agreement allowed Community Services to consider their involvement in their future procurements as noted in the report.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

Medbuy Corporation undertakes strategic sourcing on behalf of more than 350 health services providers in Canada. Medbuy has nearly \$1 billion in member purchases under contract and has greater than 300 contracts representing over 60,000 pharmaceutical, medical/surgical and equipment/component SKUs under contract. Members have access to all Medbuy contracts with medical manufacturers. Medbuy Corporation is 100% compliant with the Ontario Broader Public Sector Supply Chain Guidelines and the Provincial Procurement Directives (in effect as of April 1, 2011). Medbuy Corporation is also compliant with the Ontario/Quebec Procurement Agreement and the Agreement on Internal Trade. The City of Hamilton negotiating as a single municipal entity would not have the same purchasing power.

Medbuy Corporation contracts may also have benefits to other departments, as the contracts include a wide variety of business materials in addition to medical/surgical, pharmaceuticals and equipment. Medbuy Corporation contracts directly with the manufacturer, and is “distributor neutral.” This means the municipality is free to continue to use already established distribution channels.

Based on staff analysis, the cost of applicable supplies utilized by Hamilton EMS in 2010 was \$350,845.13; and the total cost if the municipality would have purchased these items from Medbuy Corporation contacts would have been \$221,424.67. The value of the items included in the cost comparison was \$350,845.13, while the actual expenditure was \$497,917. The cost analysis was conducted on the items available from Medbuy vendor contracts and the quantities were based on consumption in 2010. Actual net savings on the 2011 Operating Budget would be adjusted by any new demands related to safety and patient care requirements. The cost (2010) from the current vendor(s) in comparison to Medbuy is outlined below:

Item	Current Vendor(s)	Medbuy Corporation	Percentage Difference
Pharmaceuticals	\$ 140,253.14	\$ 77,057.07	<b>45.06%</b>
Medical Supplies	\$ 201,451.12	\$ 138,982.97	<b>31.00%</b>

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Batteries	\$ 9,140.87	\$ 5,384.63	<b>41.10%</b>
<b>Total</b>	<b>\$ 350,845.13</b>	<b>\$ 221,424.67</b>	<b>36.80% (over all)</b>

This represents an estimated cost savings of **\$129,420.45 per year**. The approximate cost savings for the four (4) year period would be **\$517,681.80**.

In 2010, Medbuy Corporation members purchased nearly \$1 billion in pharmaceuticals medical/surgical and equipment through Medbuy's contracts. Medbuy Corporation also returned nearly \$50 million in manufacturer rebates to its members and provided more than \$600,000 in educational and research grants to increase the knowledge and expertise of the staff in the Members it serves. The rebate to the City would be 1% of the expenditure on medical/surgical supplies, pharmaceuticals and equipment.

The City would pay the Medbuy Corporation a management fee for its services. The fee is approximately 1% of the municipality's spend that run through Medbuy's contracts. For example, if the City were to purchase \$500,000 of its supplies using Medbuy's contracts, the annual fee for that service would be \$5,000 (paid in quarterly instalments). Further, Medbuy's contracts generate rebates which averaged 5.9% in 2010. Medbuy Corporation uses "*right of off-set*" to collect its management fees. Therefore using the example above, \$500,000 in purchases would generate \$28,000 in rebates for Hamilton EMS. The Medbuy Corporation would collect the rebates on behalf of Hamilton EMS, deduct \$5,000 for its annual management fees and return \$23,000 to the City, as explained in correspondence dated March 31, 2011 from Medbuy Corporation attached as Appendix G to Report HES11006.

The Medbuy Corporation Member Participation Agreement is "*evergreen*" which means there is no specific time limit on the agreement. It can be cancelled with 90 days notice. The obligation of the Municipality is that any supply contract it elects to use must be honoured until the first legal opportunity to exit. For example, if the City elected to participate in the Medbuy contract for pharmaceuticals, even if it terminated its Participation Agreement with Medbuy, it would be obligated to fulfil the pharmaceutical contract until its expiry date.

In addition, Medbuy provides value-added services in the following areas:

1. Supply chain management consultation
2. A data management and spend analytics program designed to maximize the value of the partnership with Medbuy.
3. Access to Medbuy Corporation Research, Education and Development fund for staff training and/or research project funding.

**ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

**Financial:** The current pharmaceutical contract that expired on April 30, 2011 and was awarded based on a competitive process with the City of Hamilton as the sole customer. The most competitive bid resulted in procurement of \$140,253.14 of pharmaceuticals in 2010. The cost analysis for the same period, quantity and type of pharmaceuticals from Medbuy contracts would have cost the City \$63,196.07. The public sector competitive procurement process is the same; the difference in cost is attributed to a greater per unit discount as a result of the number of Medbuy members and the volume of materials specified in the competitive procurement process.

**Staffing:** The alternative to using the procurement contracts of the Medbuy Corporation would require the City, with the assistance of Procurement staff, to obtain a similar range of suitable vendors with comparable per unit prices.

**Legal:** There are no legal implications related to this alternative.

**CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

City of Hamilton membership in the Medbuy Corporation is linked to the Corporate Strategic Plan in the areas of Financial Sustainability, Intergovernmental Relationships and Growing our Economy.

***Financial Sustainability***

- ◆ Financially Sustainable City by 2020
- ◆ Effective and sustainable Growth Management
- ◆ Delivery of municipal services and management capital assets/liabilities in a sustainable, innovative and cost effective manner
- ◆ Full life-cycle costing for capital
- ◆ Address infrastructure deficiencies and unfunded liabilities
- ◆ Generate assessment growth/non-tax revenues
- ◆ Sustainable Tri-parti Government Agreement



***Intergovernmental Relationships***

- ◆ Influence federal and provincial policy development to benefit Hamilton
- ◆ Acquire greater share of Provincial and Federal grants (including those that meet specific needs)
- ◆ Maintain effective relationships with other public agencies

***Growing Our Economy***

- ◆ Newly created or revitalized employment sites
- ◆ Competitive business environment
- ◆ A skilled and creative labour pool that supports new employers
- ◆ An improved customer service
- ◆ A visitor and convention destination

<b>APPENDICES / SCHEDULES</b>
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- Appendix A – Medbuy Associate Program Agreement
- Appendix B – Letter of Compliance with Federal/Provincial Public Sector Procurement
- Appendix C – Letter of Confirmation of Audit Requirements (Auditor General)
- Appendix D – Medbuy Standard Terms & conditions of Vendor Contracts –Private and Confidential – distributed under separate cover
- Appendix E – Letter of Reference St. Joseph’s Health Care Hamilton
- Appendix F – Letter of Reference McMaster University
- Appendix G – Letter to Confirm Distribution of Rebates

## MEDBUY ASSOCIATE PROGRAM AGREEMENT

MEMORANDUM OF AGREEMENT dated as the \_\_\_\_ day of \_\_\_\_\_, 2011

B E T W E E N:

**MEDBUY CORPORATION**, a corporation incorporated pursuant to the laws of the Province of Ontario,

(hereinafter referred to as "Medbuy")

OF THE FIRST PART

- and -

**CITY OF HAMILTON**

(hereinafter referred to as the "Associate")

OF THE SECOND PART

WHEREAS Medbuy has expertise in negotiating advantageous terms of purchase for the supply of goods and/or services to Canadian Healthcare Providers;

AND WHEREAS the Associate has requested Medbuy to make such advantageous terms available to the Associate on a non-exclusive basis;

NOW THEREFORE IN CONSIDERATION OF the mutual premises and covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### ARTICLE 1 - DEFINITIONS

1.1 For the purposes of this Agreement, the terms set forth below shall have the meanings ascribed thereto:

- (a) "**Associate**" means the Party of the Second Part which wishes to gain access to Approved Supplier Contracts by way of entering into of this Agreement;
- (b) "**Approved Supplier**" means a supplier of goods or services to Healthcare Providers with whom Medbuy has negotiated advantageous terms of supply, as the same may exist, from time to time;
- (c) "**Approved Supplier Contracts**" means the contract or arrangements negotiated by Medbuy with an Approved Supplier for the supply of goods or services, the benefit of which is to be made available to Participants;
- (d) "**Canadian Healthcare Provider**" means:
  - (i) a Public Hospital;

- (ii) a publicly-funded, post secondary education institution, or department, faculty or school of such an institution, that provides training to physicians, dentists, nurses or other healthcare personnel or undertakes research related to healthcare;
  - (iii) a Municipality that provides administrative, ambulance, fire, public health, long-term care and/or social services;
  - (iv) a Department or Ministry (or an agency thereof) of the Federal, a Provincial or a Territorial Government or any entity directly or indirectly owned by, controlled by or created by any one or more of the foregoing, that provides healthcare services to the public in Canada or represents or acts on behalf of, provides materials management services or otherwise contracts for Public Hospitals or other publicly funded providers of healthcare services in Canada (the foregoing are intended to include a provincial or regional health authority, a provincial or regional shared services organization or an entity providing provincial or regional materials management services for healthcare providers in Canada);
  - (v) a not-for-profit or charitable organization that provides healthcare services in Canada; and
  - (vi) an entity, controlled by any one or more of the foregoing, which provides purchasing or materials management services to Canadian Healthcare Providers defined in paragraphs (i) to (v), above;
- (e) "**Distribution**" means a payment made by Medbuy to Participants in respect of any Rebate;
  - (f) "**Medbuy**" means Medbuy Corporation;
  - (g) "**Medbuy Policy**" means the policies and procedures adopted, from time to time, by Medbuy for the purposes of its business, including, without limitation, policies relating to the relationship between Medbuy and Participants, the Participants and Approved Suppliers and Medbuy and Approved Suppliers;
  - (h) "**Participant**" means any entity that has access to Approved Supplier Contracts through the Medbuy organization which, at this time, includes Shareholders and Associates. The scope of Participants may change from time to time and reference to "Participants" herein shall refer to those entities entitled to participate, from time to time;
  - (i) "**Product**" means products or services available to Participants from Approved Suppliers pursuant to the terms of an Approved Supplier Contract;
  - (j) "**Public Hospital**" means a hospital, as defined in the *Public Hospitals Act* (Ontario), that is approved as a public hospital under such Act, and

shall include any other healthcare institution so approved or designated under analogous statutes of another Province or Territory in Canada;

- (k) **“Municipality”** means, in the Province of Ontario, a local municipality, lower tier municipality, regional municipality, single-tier municipality, upper tier municipality or local board, all as defined in the *Municipal Act* (Ontario), and, in any other province or territory of Canada, an analogous entity as defined in the provincial statute of the particular province or territory relating to municipal government and the functions thereof.”
- (l) **"Rebate"** means any volume rebate, allowances or other inducements paid to or made available to Medbuy by Approved Suppliers pursuant to an Approved Supply Contract as a result of the purchase of Product by Participants;
- (m) **“Shareholder”** means a Participant which is a shareholder of Medbuy;

## **ARTICLE 2 – APPOINTMENT AND RIGHTS OF THE ASSOCIATE**

### **2.1 Appointment**

Medbuy hereby accepts the Associate as an Associate entitled to the benefits and subject to the conditions contained herein.

### **2.2 Rights of Associate**

As an Associate, the Associate is entitled to avail itself of the benefits of the Approved Supplier Contracts in force, from time to time during the term hereof, in strict accordance with the terms and provisions of the Approved Supplier Contracts and the provisions hereof.

### **2.3 Representation**

The Associate shall be entitled to attend such meetings or portions of meetings of Medbuy to which the Associate may, from time to time, be invited by Medbuy and participate in any such meetings in the manner determined by Medbuy. Meetings shall include teleconferences and meetings convened electronically.

## **ARTICLE 3 - TERM**

### **3.1 Term**

This Agreement shall have an initial term of one year and shall thereafter renew, on an annual basis for one year terms unless terminated as provided herein.

### **3.2 Termination**

Any one of the parties hereto may terminate this Agreement, without cause, on giving to the other parties not less than 90 days prior written notice. This right shall be in addition to any right of termination for cause as provided herein.

## ARTICLE 4 – OBLIGATIONS OF THE ASSOCIATE

### 4.1 Obligations

During the Term of this Agreement (and as provided in this Agreement thereafter) the Associate agrees that it shall:

- (a) Fully support purchase arrangements established by Medbuy under those Approved Supplier Contracts in respect of which the Associate elects to participate. "Fully support" means that the Associate shall, in respect of those Approved Supplier Contracts in which it elects to participate, purchase not less than the percentage or dollar volume of its purchases from Approved Suppliers of those Products governed by the relevant Approved Supplier Contract(s) all as set forth in Medbuy Policy. Exceptions resulting from geographical location or other practical reasons, such as existing contracts, provincial regulations or clinical reasons, will be considered in accordance with Medbuy Policy. The Associate acknowledges that Products purchased under Approved Supplier Contracts are intended for the Associate's own use and are not intended to be resold or supplied to third parties.
- (b) If the Associate has agreed to participate in an Approved Supplier Contract and developed a contract conversion plan in consultation with Medbuy, the Associate may, if it is bound to purchase all or some of the Products provided for in the Approved Supplier Contract, pursuant to a pre-existing contract with another group purchasing organization or a pre-existing individual contract with a different supplier, honour its existing contract through to the normal expiration of such other contract, provided the Associate does not exercise any options of renewal. Immediately upon the expiration of the pre-existing contracts, described above, the Associate shall purchase the Products previously obtained under the pre-existing contracts pursuant to the relevant Approved Supplier Contract.
- (c) If the Associate is under contract with the Approved Supplier, under the Approved Supplier Contract and the Associate elects to participate in the Approved Supplier Contract, then the Associate shall participate in the Approved Supplier Contract immediately.
- (d) If the Associate has elected to participate in an Approved Supplier Contract, the Associate shall order Products in the Associate's name and for its benefit, directly from the relevant Approved Supplier in accordance with the applicable Approved Supplier Contract. The Associate shall be responsible for all aspects of the relationship with any Approved Supplier (except with respect to any Rebates) including, without limiting the generality of the foregoing, order procedure, delivery and payment. The Associate acknowledges that Approved Supplier Contracts may require adherence to specified payment terms or ordering procedures, including minimum purchase quantities and the Associate agrees that it shall comply with all of the terms and conditions of the Approved Supplier Contracts.

- (e) Provide to Medbuy such information regarding its purchases of Product as Medbuy may, from time to time, request, including information relating to purchases under Approved Supplier Contracts or otherwise, for the purposes of enabling Medbuy to confirm compliance by the Associate with its obligations hereunder and to assist Medbuy in developing new programs or Approved Suppliers. In this capacity, Medbuy is acting as agent for the Associate in respect of its relationship with Approved Suppliers and, as such, is bound by the same confidentiality obligation to which the Associate is bound. Medbuy agrees to comply with confidentiality obligations of the Associate when the Associate has communicated those obligations to Medbuy.
- (f) Medbuy and the Associate will meet at least once annually to review and discuss the Associate's contract participation, conversion and migration.
- (g) The Associate represents that it is and shall remain, throughout the term hereof, a Canadian Healthcare Provider.

#### 4.2 Sanctions

The Associate acknowledges that its failure to comply with the terms of this Agreement or the terms of an Approved Supplier Contract in which it participates may result in sanctions, as determined by Medbuy Policy, being applied against the Associate. Sanctions may include, but are not limited to, any one or more of the following:

- (a) suspension, for such period of time as Medbuy may determine, of the Associate's right to purchase all or some Products pursuant to the terms of one or more Approved Supplier Contracts, provided that such suspension does not result in the Associate's breach of its obligations under the Approved Supplier Contract or if a breach would result, Medbuy has obtained the consent and waiver from the relevant Approved Supplier;
- (b) suspension or forfeiture, for such period of time as Medbuy may determine, of the Associate's right to receive Distributions, in whole or in part;
- (c) assessment against the Associate of costs or damages arising from or related to the Associate's failure to comply, to be set-off against future Distributions;
- (d) the termination of this Agreement;
- (e) imposition of conditions upon the Associate's continued participation;
- (f) imposition of economic sanctions against the Associate, to be set-off against future Distributions.

The imposition of sanctions shall be at the discretion of Medbuy, in accordance with Medbuy Policy. In imposing sanctions, Medbuy shall take reasonable steps to ensure

that the Associate is not subject to sanctions from both the relevant Approved Supplier and Medbuy if such imposition would result in the Associate facing double jeopardy. Imposition of sanctions shall require that Medbuy provide notice to the Associate of the breach for which sanctions are under consideration. The Associate shall rectify the breach within the time period specified in such notice (which shall not be less than five business days) or, if the breach is not reasonably capable of rectification, the Associate shall have taken steps to rectify the breach within the specified time period and diligently pursue rectification in a manner reasonably satisfactory to Medbuy. If the Associate fails to so comply, Medbuy may apply such sanctions as it so determines appropriate. Notwithstanding the foregoing, any economic sanctions shall not exceed an amount equal to Distributions attributable to the Associate in the immediately preceding fiscal year or, if the Associate was not an Associate for the entire preceding fiscal year, the Distributions, as estimated by Medbuy, acting reasonably, attributable to the Associate had it been an Associate for the full fiscal year.

## **ARTICLE 5 – OBLIGATIONS OF MEDBUY**

### **5.1 Obligations**

During the Term hereof, Medbuy agrees it shall:

- (a) maintain the necessary staff and premises to enable Medbuy to negotiate and maintain Approved Supplier Contracts;
- (b) conduct competitive bids for Products in respect of which more than one supplier exists, in compliance with the provisions of the Agreement on Internal Trade (MASH Protocol – Annex 502.4);
- (c) use its best efforts to consolidate buying for its Participants and to obtain the best net value available, taking into account pricing and Rebates;
- (d) in accordance with Medbuy Policy, distribute to Participants, as Distributions, one hundred percent (100%) of the surplus of Rebates received in excess of expenses. Distributions shall be made by Medbuy in accordance with the terms of Approved Supplier Contracts, generally in proportion to the purchases of classes of Product by the Participants giving rise to such Rebates.

5.2 During the term hereof, Medbuy shall provide the Associate with access to and communicate any changes in Medbuy Policy to the Associate. The Associate acknowledges that any changes to Medbuy Policy will involve consultation by Medbuy with Participants. The Associate agrees that it shall comply with any amendments to Medbuy Policy during the term of this Agreement upon any such amendments becoming effective.

5.3 In conducting competitive bids for Products, Medbuy shall be guided by advice from its committees, which are comprised of Participant representatives as set forth in the committees' respective terms of reference, in order to identify products or services that will provide value to Participants once Approved Supplier Contracts can be completed.

## **ARTICLE 6 - FEES AND DISTRIBUTIONS**

### **6.1 Distributions**

Any Distributions relating to purchases of Product by the Associate shall be paid to Medbuy by the Approved Supplier for Distribution to the Associate.

### **6.2 Management Fee**

A management fee shall be paid to Medbuy, calculated in accordance with Medbuy Policy and generally based upon the volume of purchases completed by or on behalf of the Associate under Approved Supplier Contracts. Management fees are charged to all Participants and are intended to be used by Medbuy to pay its operating expenses. The Medbuy Policy relating to management fees shall be applied consistently to all Participants who are associates.

### **6.3 Payment of Management Fee**

Management fees attributable to the Associate shall be paid by withholding such fees from Distributions otherwise payable by Medbuy to the Associate in respect of purchases made by or on behalf of the Associate under Approved Supplier Contracts.

## **ARTICLE 7 - TERMINATION FOR CAUSE**

### **7.1 Cause**

In the event that the Associate fails to abide by the terms of this Agreement and fails, within 10 days of notice thereof, to rectify any deficiency, Medbuy may terminate this Agreement immediately upon notice being given in writing to the Associate.

### **7.2 Status of Fees and Contracts**

In the event of termination for cause, the Associate shall not be entitled to continue with any of the Medbuy Contracts.

## **ARTICLE 8 - CONFIDENTIALITY**

### **8.1 Confidential Information**

Either party may disclose to the other party during the course of this Agreement confidential and/or proprietary information, including, but not limited to the terms of this Agreement, the names of Approved Suppliers, Approved Supplier Contracts, details regarding the participation of Associates or information relating to pricing or details of Medbuy's programs ("Confidential Information"). All such information shall, unless otherwise indicated, be treated as Confidential Information and subject to the terms hereof.

8.2 To the extent that the Associate is governed by and must adhere to any federal or provincial legislation requiring disclosure of information, the obligations of the Associate hereunder shall be subject to the Associate's requirement to comply with and adhere to the provisions of such legislation, to the extent applicable. Notwithstanding



the foregoing, the Associate acknowledges that the terms and conditions of “Approved Supplier Contracts” are competitively sensitive and, to the extent the Associate is able to limit, reduce or protect the scope of disclosure, in accordance with any such legislation, the Associate shall take all reasonable steps to restrict any requested disclosure to the extent the Associate is able pursuant to such legislation.

### 8.3 Confidential Requirements

With respect to any Confidential Information disclosed in the course of this Agreement, the party receiving such Confidential Information agrees to:

- (a) not disclose any Confidential Information to third parties except: (i) those of it's employees, consultants and agents with a need to know; (ii) those parties in respect of whom consent to disclose has been granted in writing by the party disclosing Confidential Information; and/or (iii) as required by law or by any court governmental body of competent jurisdiction;
- (b) advise employees, consultants and agents who receive or have access to Confidential Information of the existence of the confidentiality provisions of this agreement and the obligations created thereby, ensuring that any consultants and agents have professional or contractual obligations to ensure confidentiality of information received by them in the course of their engagement;
- (c) use and require it's employees, consultants and agents to exercise at least the same degree of care required for the party's own confidential information, but in any event, holding the Confidential Information in confidence;
- (d) use the Confidential Information only for the purposes of performing it's obligations pursuant to this agreement;
- (e) comply with its obligations of confidentiality hereunder following the termination of this Agreement.

### 8.4 Non-Confidential Information

Notwithstanding anything to the contrary herein neither party shall have an obligation to preserve the confidentiality of any Confidential Information which:

- (a) was previously known to such party free of any obligation to keep it confidential;
- (b) is or becomes publicly available by other than unauthorized disclosure;
- (c) developed by or on behalf of such party independently of any Confidential Information disclosed by the other party; or
- (d) is received from a third party whose disclosure does not violate any confidentiality obligation.

## 8.5 Remedies

The parties acknowledge and agree that the restrictions contained herein are reasonable and a necessary protection of the interests of the parties, and that any violation of these restrictions would cause substantial and irreparable injury to the parties. In the event of any violation of these restrictions, the parties shall be entitled, in addition to any other remedy available, to preliminary and permanent injunctive relief, and all costs of enforcement hereunder, including, but not limited to, reasonable solicitor's fees on a solicitor and his own client basis.

## ARTICLE 9 - STATUS OF ASSOCIATE AND MEDBUY

### 9.1 Independent Contractors

Each of the parties hereto acknowledges and agrees that they are independent contractors and that this Agreement does not appoint or authorize either party to enter into agreements for the provision of services or products or to bind, in any fashion whatsoever, the other party. Notwithstanding the foregoing, the Associate acknowledges and agrees that Medbuy shall have the authority to negotiate, Approved Supplier Contracts, in respect of which the Associate may elect to make purchases of services or goods.

### 9.2 Associate Purchases

Any purchase made by the Associate pursuant to an Approved Supplier Contract shall be for the Associate's account and Medbuy shall, in no way whatsoever, be responsible to pay any amount in respect of any such purchase. The Associate hereby indemnifies and agrees to save Medbuy harmless from any claim made by an Approved Supplier to the Associate pursuant to an Approved Supplier Contract.

## ARTICLE 10 - GENERAL PROVISIONS

### 10.1 Time of the Essence

Time shall be of the essence of this Agreement.

### 10.2 Legal Fees

Each of the parties hereto shall pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and deliver of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.

### 10.3 Assignment

The Associate shall not assign, by instrument, operation of law or otherwise, it's rights under this Agreement without the prior written consent of Medbuy, which consent may be arbitrarily withheld.

#### 10.4 **Benefit of the Agreement**

This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

#### 10.5 **Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understanding and agreements between the parties hereto and with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, expressed, implied or statutory, between the parties other than as expressly set forth in this Agreement.

#### 10.6 **Amendments and Waiver**

No modification of or amendment to this Agreement shall be void or binding unless set forth in writing and duly executed by both of the parties hereto and no waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, shall be limited to specific breach waived.

#### 10.7 **Notices**

Any demand, notice or other communication (hereinafter referred to as "Communication") to be given in connection with this Agreement shall be given in writing and may be given by personal delivery, by registered mail or by transmittal by facsimile or email addressed to the recipient as follows:

The Associate:

City of Hamilton  
71 Main Street, West  
Hamilton, ON  
L8P 4Y5

To Medbuy Corporation:

4056 Meadowbrook Drive, Unit135  
London, Ontario  
N6L 1E4  
Attention: Leslie McGill

or to such other address, email or facsimile number or individual as may be designated by notice by either party to the other. Any Communication given by personal delivery shall be conclusively deemed to have been given on the date of actual delivery thereof and, if given by registered mail, on the third business day following the deposit thereof in the mail and, if given by facsimile or email, on the business day following transmittal thereof. If the party giving any communication knows or ought reasonably to know of

any difficulties with the postal system which might affect the delivery of mail, any such communication shall not be mailed but shall be given by personal delivery, by email or by facsimile

#### **10.8 No Warranties**

The Associate acknowledges that Medbuy is not supplying Products pursuant to the Approved Supplier Contracts and, accordingly, Medbuy makes no representations, conditions or warranties, express or implied, statutory or otherwise with respect to the purchases of Products by the Associate pursuant to the Approved Supplier Contracts, including, without limiting the generality of the foregoing, any representation or warranty, express or implied, as to the quality of the material or workmanship of the Products purchased or the conformity of the Products purchased to the provisions and specifications of any purchase order or orders relating to the Products, or to the condition, design, merchantability, durability, operation or fitness for use for any particular purpose of any of the Products purchased. The Associate shall have the benefit of any representations or warranties in respect of Products supplied in accordance with the terms of the Approved Supplier Contract. Medbuy will not take any action to charge or encumber the Products purchased and agrees to assign or otherwise make available to the Associate, to the extent permitted by law, such rights as Medbuy may have under any warranties, guarantees or service contracts with respect to any Products purchased, made by any manufacturer, vendor or supplier thereof;

In the event the Associate, upon receipt of any Product, is of the opinion that the Product is defective, faulty or does not meet the specifications of the Associate in any manner whatsoever, the Associate shall immediately notify Medbuy so that Medbuy can in turn notify the Approved Supplier. In such event, Medbuy shall use its best efforts on behalf of the Associate to resolve the dispute. Notwithstanding the foregoing, the Associate shall still remain responsible as provided in section 1 hereof for payment of such merchandise unless the Approved Supplier has agreed to alternate payment terms or other arrangements.

**10.9 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

**IN WITNESS WHEREOF** the parties hereto have hereunto executed this Agreement under seal.

**MEDBUY CORPORATION**

**CITY OF HAMILTON**

Per: \_\_\_\_\_  
Duly Authorized Officer

Per: \_\_\_\_\_  
Duly Authorized Officer

Date: \_\_\_\_\_

Per: \_\_\_\_\_  
Duly Authorized Officer

Date: \_\_\_\_\_



Blaine Lucas  
Manager, Professional Standards  
Hamilton Emergency Services, EMS  
489 Victoria Ave N.  
Hamilton, Ontario. L8L 5H1

March 28, 2011

Dear Mr. Lucas:

I am pleased to confirm to you that Medbuy Corporation is fully compliant with all federal and provincial public sector procurement guidelines, as well as competitive bidding law. Our policies and procedures align with the Agreement on Internal Trade as well as the Ontario/Quebec Procurement Agreement.

Medbuy, because it is owned by public sector institutions, is considered to be a broader public sector organization. As such, in Ontario, we are required to be fully compliant with the Broader Public Sector Supply Chain Secretariat's Guideline as well as the Procurement Directive which comes into effect April 1, 2011.

Should you require any further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Leslie McGill". The signature is written in a cursive style.

Leslie McGill  
Senior Vice President, Member Services

---

4056 Meadowbrook Drive, Unit 135  
London, ON  
N6L 1E4  
T: 519.652.1688 F: 519.652.2788



Blaine Lucas  
Manager, Professional Standards  
Hamilton Emergency Services, EMS  
489 Victoria Ave N.  
Hamilton, Ontario. L8L 5H1

April 4, 2011

Dear Mr. Lucas:

This letter is to confirm that Medbuy, just as any publicly funded entity, is subject to audit by the Auditor General of the Province of Ontario as it relates to our business practices as we are an agent of our members which are publicly funded, publicly accountable entities.

Transparency is a fundamental tenet of Medbuy Corporation. To that end, we are also open to audit by any one of our Members or any of the Ministries that impact the work we undertake on behalf of the hospitals and healthcare organizations we serve.

Sincerely,

A handwritten signature in black ink that reads "Leslie McGill". The signature is written in a cursive, slightly slanted style.

Leslie McGill  
Senior Vice President, Member Services

Blaine Lucas  
Manager, Professional Standards  
Hamilton Emergency Services, EMS  
489 Victoria Ave N.  
Hamilton, Ontario. L8L 5H1

March 31, 2011

Dear Mr. Lucas –

On behalf of St. Joseph's Healthcare Hamilton, I am pleased to provide the following reference for Medbuy Corporation.

St. Joseph's is a longstanding Member and Shareholder of Medbuy. The value the organization provides to our hospital is significant. The savings we have achieved are substantial and have enabled our organization to effectively redirect those dollars back to patient care.

Beyond the savings we have been able to achieve are the significant value-added benefits provided by Medbuy. These include access to funds for education, research and development; peer networking; best practices and product standardization which assists in delivering care to our patients.

Sincerely,



Ms. Susan Hollis  
Vice President, Business & Therapeutic Services & CFO



**Mailing Address:**  
1280 Main Street W., DTC  
Hamilton, ON, CANADA  
L8S 4L8

**Physical Location:**  
Downtown Centre  
50 Main Street E., 4th Floor  
Hamilton, ON L8N 1E9

Tel: 905.525.9140  
Fax: 905.572.1015  
[www.mcmaster.ca/purchase](http://www.mcmaster.ca/purchase)

March 31, 2011

Mr. Blaine Lucas  
Manager, Professional Standards  
Hamilton Emergency Services, EMS  
489 Victoria Ave N.  
Hamilton, Ontario. L8L 5H1

Dear Mr. Lucas,

I am pleased to provide the following reference for Medbuy Corporation on behalf of McMaster University.

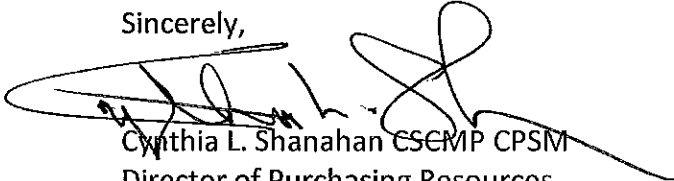
McMaster University is a new member of Medbuy, joining in January, 2011. We are proud to be partnering with Medbuy, the first-ever partnership between a Canadian healthcare group purchasing organization and a university. The value the organization provides to our university is significant.

McMaster has already started to see the immediate benefits of the new relationship by completing Medbuy's seamless conversion process. The University also looks forward to a partnership that not only makes our purchasing easier and more flexible, but also offers a large scope of products at very competitive prices. Medbuy's goal to support patient safety and quality care practices through our sourcing processes also aligns with McMaster's mission to deliver quality education and training for Canada's next generations of healthcare providers.

Having a purchasing partner that understands our needs and responds quickly is important. Medbuy has been able to do this and more for McMaster. We are quite pleased at how quickly the Medbuy team reviewed the products we regularly purchase and matched them to a list of their contracted products. Beyond the savings we have been able to achieve are the significant value-added benefits provided by Medbuy. We look forward to the customized reporting; peer networking, best practices and product standardization.

While the University is currently focusing on purchasing medical and surgical products for its campus clinic, medical school and clinical research laboratories, we are also excited about the potential for the relationship to grow and expand.

Sincerely,

  
Cynthia L. Shanahan CSEMP CPSM  
Director of Purchasing Resources



Blaine Lucas  
Manager, Professional Standards  
Hamilton Emergency Services, EMS  
489 Victoria Ave N.  
Hamilton, Ontario. L8L 5H1

March 31, 2011

Dear Mr. Lucas:

I am pleased to provide verification of Medbuy's business/financial model.

Medbuy is an Agent on behalf of the organizations its serves. For this service, we charge a management fee. As Agent, not only do we create contracts for Members, we also collect and disburse rebates our Members earn by participating in our contracts. We disburse 100% of the rebates our Members earn through contract participation back to the Members (pro rata), and through a process called right-of-offset, we subtract our management fee.

In 2010, Medbuy Members' average rebate was 5.9% on all purchases made, and the Members' Management fee was equal to .98% of the Member's purchases under contract. For example, if Hamilton's EMS Service were to have purchased \$500,000 utilizing Medbuy contracts in 2010, its management fee would have been \$4,850 and its estimated gross rebate would have been \$29,500. Medbuy, through the right-of-offset process would have subtracted the management fee and returned a net rebate of \$24,650 to the EMS Service. Please note this example is based on the "average" Medbuy Member in 2010. Each individual Member's earned rebates are a direct reflection of the contracts in which they participate, and each contract has a different rebate structure.

I trust this explanation of our business/financial model provides the necessary detail required.

Sincerely,

Leslie McGill  
Senior Vice President, Member Services